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310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 70.00: ENVIRONMENTAL RESULTS PROGRAM CERTIFICATION

Section

70.01: Purpose and Authority

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70.01: Purpose and Authority

(1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring a facility-wide, performance-based compliance certification.

(2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), c. 21A, §§ 2, 13 and 16, c. 21C (the Hazardous Waste Management Act), c. 111, §§ 142A through 142M (the Massachusetts Clean Air Act), and c. 111 § 150A (the Solid Waste Management Act).

70.02: Definitions

_____ The definitions found in 310 CMR 70.02 serve only for the purposes of enforcing the compliance certification requirements contained in 310 CMR 70.00 and are not intended to displace the existing definitions of those terms in the underlying standards.

Department means the Massachusetts Department of Environmental Protection.

Environmental Results Program Facility or ERP Facility means one of the following:

- (a) a dry cleaner subject to 310 CMR 7.26(10) through (16);
- (b) a photoprocessor subject to 310 CMR 71.00;
- (c) a printer as defined in 310 CMR 7.26(22);
- (d) a boiler subject to 310 CMR 7.26(30) through (37);
- (e) an engine or combustion turbine subject to 310 CMR 7.26(4) through (44); or
- (f) a dental facility subject to 310 CMR 73.00.

Operator means the person responsible for the over-all operation of an ERP facility.

Owner means any person who has legal or equitable ownership, alone or with others, of an ERP facility, including, but not limited to, any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

Person means any individual, partnership, corporation, syndicate, company, firm, association, authority, department, bureau, trust or group including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.

Responsible Official is one of the following:

- (a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility; or
- (b) For a partnership or sole proprietorship: a general partner with the authority to bind the partnership or the proprietor, respectively; or
- (c) For a municipality, state, federal, or other public agency including any legislatively-created authority, board, commission, district, *etc.*: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

70.02: continued

Standards means those requirements listed in the certification form referred to in 310 CMR 70.03(4), including but not limited to 310 CMR 7.00, 310 CMR 30.00, 310 CMR 71.00, 310 CMR 72.00, 310 CMR 73.00, 314 CMR 3.00, 314 CMR 5.00, or 314 CMR 12.00, requirements contained in NESHAP's (40 CFR Part 61 Subparts, and Part 63) or NSPS's (40 CFR Part 60 Subparts) that have been delegated to Massachusetts, and the terms and conditions of any permits issued pursuant to any of those regulations.

70.03: Compliance Certification Requirements

(1) Certification. Effective June 27, 2003 each owner and/or operator of an ERP facility or an industrial wastewater holding tank shall submit to the Department an initial certification pursuant to 310 CMR 70.03(2) establishing the owner and/or operator's status as an ongoing certifier and thereafter file certification no later than the schedule set forth in 310 CMR 70.03(6), or as required pursuant to 310 CMR 70.03(4). A responsible official shall sign a certification statement which:

- (a) declares applicable standards as listed in the certification form and states whether the ERP facility is in compliance with the applicable standards; and
- (b) identifies the date, type, and reporting date of any violations that were required by applicable law and/or standards as listed in the certification form to be reported to the Department and that occurred within the certification period prior to the date of the certification statement including, but not limited to, any notifications required pursuant to MGL c. 21E, § 7 and 310 CMR 40.0300 (releases and threats of release of oil and/or hazardous material), and any reporting of violations required pursuant to 310 CMR 7.02(6) (air pollution control equipment failures), 314 CMR 12.03(8) (emergency bypasses to sewer treatment works), 310 CMR 30.520 (hazardous waste contingency plans) and the terms and conditions of any existing permits issued by the Department.
- (c) compliance certification is required to be filed at the end of each certification period unless a statement of non-applicability is submitted to the Department on a form approved by the Department;
- (d) For transition purposes, effective June 27, 2003 all initial certifications or annual compliance certifications timely filed by September 15, 2002 or filed in the period of September 16, 2002 through September 15, 2003, shall establish the owner and/or operator's status as an ongoing certifier under 310 CMR 70.00;
- (e) Notwithstanding 310 CMR 70.03(1)(a) through (d), photoprocessors holding a permit from the Massachusetts Water Resources Authority pursuant to 360 CMR 10.000 are deemed to hold the equivalent of an ERP certification and are not required to file a initial certification or annual compliance certification pursuant to 310 CMR 70.00 and 71.00, but such photoprocessors are required to pay an annual compliance fee to the Department pursuant to 310 CMR 4.00; and
- (f) Photoprocessors located in the service area of the Massachusetts Water Resources Authority that haul or ship photoprocessing waste off-site are required to file a initial certification or annual compliance certification pursuant to 310 CMR 70.00 and 71.00.

(2) Certification Statement. Each responsible official providing information for an ERP facility is required, pursuant to 310 CMR 70.03(1), to make the following certification:

"I, [name of responsible official], attest under the pains and penalties of perjury:

- (a) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
- (b) that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
- (c) that systems to maintain compliance are in place at the facility and will be maintained for the duration of the certification period even if processes or operating procedures are changed over the course of the certification period; and
- (d) that I am fully authorized to make this attestation on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

70.03: continued

(3) One-time Certification Statement. Each responsible official providing information for an industrial wastewater holding tank is required, pursuant to 310 CMR 70.03(1), to make the following certification:

"I, [name of responsible official], attest under the pains and penalties of perjury:

- (a) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
- (b) that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
- (c) that systems to maintain compliance are in place at the facility and will be maintained even if processes or operating procedures changed; and
- (d) that I am fully authorized to make this attestation on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

(4) New ERP Facilities or New Industrial Wastewater Holding Tanks, Recommencement of ERP Facility Operation, and Transfer of Ownership. Within 60 days of:

- (a) the commencement of operation of a new ERP facility or a new industrial wastewater holding tank;
- (b) the recommencement of operation of an ERP facility for which no certification was submitted during the year prior to recommencement; or
- (c) acquiring an ERP facility, each owner and/or operator of the ERP facility shall submit a compliance certification in accordance with 310 CMR 70.03(1) and (2).

(5) Certification Form. Each initial certification and each annual compliance certification required pursuant to 310 CMR 70.03 shall be on a form prescribed by the Department and shall address compliance with standards to which the ERP facility is subject. The certification form may include specialized forms for specific categories of ERP facilities or holding tanks, and any owner/operator required to submit a certification pursuant to 310 CMR 70.03 shall submit all forms applicable, including but not limited to forms which identify the requirements in violation, what the facility will do to return to compliance, and the date by which compliance will be achieved.

(6) Schedule for Submission of Certification Form.

- (a) Owners and/or operators of the following types of ERP facilities shall submit certification forms to the Department by September 15th of each year:
 - 1. dry cleaners subject to 310 CMR 7.26(10) through (16);
 - 2. photo processors subject to 310 CMR 71.00;
 - 3. printers subject to 310 CMR 7.26(20) through (29).
- (b) Owners and/or operators of facilities with boilers subject to 310 CMR 7.26(30) shall submit certification forms in accordance with the schedule set forth in 310 CMR 7.26(32)(b).
- (c) Owners and/or operators of industrial wastewater holding tanks shall submit to the Department one-time certification forms in accordance with the schedule and conditions set forth in 314 CMR 18.11.
- (d) Dental facilities subject to 310 CMR 73.00 shall submit certification forms in accordance with the schedule and conditions set forth in 310 CMR 73.07.

70.04: Violations of 310 CMR 70.00

It shall be a violation of 310 CMR 70.00 for any person to:

- (1) fail to submit a certification pursuant to 310 CMR 70.03(1);
- (2) make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to 310 CMR 70.03;
- (3) make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;

70.04: continued

(4) hold themselves out as a responsible official in violation of the requirements contained in 310 CMR 70.03(2);

(5) fail to comply with the applicable standards; or

(6) violate any other provision of 310 CMR 70.00.

The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21 §§ 26 through 53 (Massachusetts Clean Waters Act), c. 21A §§ 2, 8, 13 and 16, c.21C (Hazardous Waste Management Act), c. 111 §§ 142A through 142M (Massachusetts Clean Air Act), and c. 111, § 150A (the Solid Waste Management Act) in order to obtain full compliance with all requirements applicable to ERP facilities, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

REGULATORY AUTHORITY

310 CMR 70.00: M.G.L. c. 21, §§ 26 through 53; c. 21A, §§ 2, 13 and 16; c. 21C, c. 111, §§ 142A through 142M and 150A.

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